

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

JASON GALBRAITH,)
)
Plaintiff,)
)
v.) Case No. CIV-20-573-J
)
OKLAHOMA DEPARTMENT OF)
CORRECTIONS, et al.,)
)
Defendants.)

ORDER

Plaintiff, a state prisoner appearing pro se, filed a Complaint under 42 U.S.C. § 1983 complaining about his missing property. [Doc. No. 1]. The matter was referred for initial proceedings to United States Magistrate Judge Suzanne Mitchell consistent with 28 U.S.C. § 626(b)(1)(B), (C). Defendants filed a motion to dismiss [Doc. No. 24] and Plaintiff did not respond.

On review, Judge Mitchell recommended granting Defendants' motion to dismiss the Oklahoma Department of Corrections under the Eleventh Amendment and, on screening, recommended that Plaintiff's claims against Defendants in their official capacities likewise be dismissed under the Eleventh Amendment. [Doc. No. 28 at 4-7]. These dismissals were recommended to be without prejudice. *See id.* at 5. Turning to the individual capacity claims, Judge Mitchell further recommended that Defendants' motion to dismiss be granted and Plaintiff's claims dismissed without prejudice for nonexhaustion of administrative remedies. *See id.* at 8-15. Despite being cautioned that he must file any objection no later than February 10, 2021, *see id.* at 15, Plaintiff did not object and has waived his right to appellate review of the factual and legal

issues addressed in the Report and Recommendation. *See Cassanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

Accordingly, the Court ADOPTS the Report and Recommendation [Doc. No. 28], GRANTS Defendants' motion to dismiss, in relevant part, [Doc. No. 24], and DISMISSES the official and individual capacity claims against Defendants without prejudice.

A separate judgment shall be entered.

IT IS SO ORDERED this 16th day of February, 2021.



BERNARD M. JONES
UNITED STATES DISTRICT JUDGE